

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	SEALED
-v.-	:	SUPERSEDING
	:	<u>INDICTMENT</u>
MICHAEL STEINBERG,	:	
	:	S4 12 Cr. 121 (RJS)
Defendant.	:	

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COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all times relevant to this Indictment, MICHAEL STEINBERG, the defendant, was a portfolio manager at a hedge fund located in New York, New York ("Hedge Fund A"). STEINBERG managed a portfolio that was predominantly invested in technology stocks.

2. At all times relevant to this Indictment, Jon Horvath ("Horvath"), a coconspirator not named as a defendant herein, was an analyst at Hedge Fund A who worked for MICHAEL STEINBERG, the defendant.

3. At all times relevant to this Indictment, Jesse Tortora ("Tortora"), a coconspirator not named as a defendant herein, was employed as an analyst at a hedge fund located in Stamford, Connecticut ("Hedge Fund B").

4. At all times relevant to this Indictment, Danny Kuo ("Kuo"), a coconspirator not named as a defendant herein, was employed as an analyst at a wealth management company headquartered in South Pasadena, California ("Investment Firm C").

5. At all times relevant to this Indictment, Dell, Inc. ("Dell"), a public company whose stock was traded on the Nasdaq Stock Market, produced personal computers and provided technology services around the world. Further, at all times relevant to this Indictment, Dell's policies prohibited the unauthorized disclosure of Dell's confidential information.

6. At all times relevant to this Indictment, NVIDIA Corporation ("NVIDIA"), a public company whose stock was traded on the Nasdaq Stock Market, produced, among other things, graphics processors. Further, at all times relevant to this Indictment, NVIDIA's policies prohibited the unauthorized disclosure of NVIDIA's confidential information.

The Insider Trading Scheme

7. From in or about late 2007 through in or about 2009, MICHAEL STEINBERG, the defendant, obtained material, nonpublic information ("Inside Information") from his analyst, Horvath. Horvath, in turn, obtained the Inside Information directly and indirectly from employees of certain publicly traded technology companies ("Technology Companies"), including

information relating to the Technology Companies' earnings, revenues, gross margins, and other confidential and material financial information of the Technology Companies. Specifically, Horvath obtained Inside Information from his own sources at companies, as well as from analysts who worked at different hedge funds and investment firms in New York, New York and elsewhere (the "Analyst Coconspirators"), who, in turn, obtained the Inside Information directly or indirectly from employees of the Technology Companies. STEINBERG executed and caused to be executed securities transactions in certain of the Technology Companies based in whole or in part on the Inside Information Horvath provided to him, earning substantial sums in unlawful profits for the benefit of Hedge Fund A.

8. The Inside Information received by MICHAEL STEINBERG, the defendant, was obtained in violation of:

- (i) fiduciary and other duties of trust and confidence owed by the employees of the Technology Companies to their employers;
- (ii) expectations of confidentiality held by the Technology Companies;
- (iii) written policies of the Technology Companies regarding the use and safekeeping of confidential business information; and
- (iv) agreements between the Technology Companies and their employees to maintain information in confidence.

The Dell Inside Information

9. From in or about 2008 through in or about 2009, in advance of Dell's quarterly earnings announcements, Tortora provided Inside Information regarding Dell's financial performance (the "Dell Inside Information") to Horvath and to the portfolio manager for whom Tortora worked, among others. Tortora obtained the Dell Inside Information from Sandeep Goyal, a/k/a "Sandy Goyal" ("Goyal"). At all times relevant to this Indictment, Goyal worked as an associate analyst for a global asset management firm based in New York, New York. Goyal, in turn, obtained the Dell Inside Information from an employee at Dell (the "Dell Insider").

10. At certain times relevant to this Indictment, the Dell Insider worked in Dell's investor relations department, and had access to confidential financial information concerning Dell's quarterly earnings announcements before it was publicly announced. The disclosure by the Dell Insider of the Dell Inside Information in advance of Dell's public earnings announcements violated Dell's policies and the Dell Insider's fiduciary and other duties of trust and confidence owed to Dell.

August 28, 2008 Earnings Announcement

11. Dell announced its earnings for the quarter ended August 1, 2008 shortly after the close of the market on or about August 28, 2008 (the "August 28 Earnings Announcement"). On

multiple occasions in advance of the August 28, 2008 Earnings Announcement, the Dell Insider provided to Goyal, who, in turn, provided to Tortora, Inside Information concerning Dell's financial results for the quarter ended August 1, 2008. That Inside Information reflected, among other things, that Dell's gross margins would be materially lower than market expectations. As such, the Inside Information was negative news concerning the upcoming August 28 Earnings Announcement.

12. Tortora then provided this negative Inside Information to Horvath, among others, and Horvath, in turn, provided the Inside Information to MICHAEL STEINBERG, the defendant. STEINBERG executed or caused to be executed transactions in securities of Dell based in whole or in part on the Dell Inside Information.

13. Specifically, on or about August 18, 2008, after receiving the Dell Inside Information, MICHAEL STEINBERG, the defendant, executed or caused to be executed short sales of Dell stock. The following events, among others, led to the August 18, 2008 short sales:

a. On or about Friday, August 15, 2008, Tortora obtained the Dell Inside Information from Goyal, who had, in turn, obtained the information from the Dell Insider in the evening on or about August 14, 2008.

b. On or about Monday, August 18, 2008, at approximately 12:20 p.m., Tortora and Horvath spoke by telephone for approximately 10 minutes.

c. On or about Monday, August 18, 2008, at approximately 12:34 p.m. - a few minutes after Horvath completed his telephone call with Tortora - Horvath had a telephone conversation with STEINBERG that lasted approximately 2 minutes.

d. At approximately 12:37 p.m. on or about August 18, 2008, the portfolio at Hedge Fund A over which STEINBERG had sole trading discretion ("STEINBERG's Portfolio") started to sell short shares of Dell.

e. At approximately 12:38 p.m. on August 18, 2008, Horvath wrote in an email to STEINBERG: "Pls keep the DELL stuff especially on the down low just mentioning that because JT [Jesse Tortora] asked me specifically to be extra sensitive with the info."

f. By the end of the trading day on or about August 18, 2008, STEINBERG's Portfolio had acquired a net short position of 167,368 shares of Dell stock.

14. Similarly, on or about August 28, 2008, MICHAEL STEINBERG, the defendant, executed or caused to be executed short sales of Dell stock based in whole or in part on the Dell Inside Information. The following events, among others, led to the August 28, 2008 short sales:

a. On or about August 26, 2008, at approximately 1:09 p.m., Horvath sent an email to STEINBERG and another portfolio manager at Hedge Fund A stating, in relevant part, that, based on a "2nd hand read from someone at the company," Horvath learned that Dell would report a "GMs [gross margins] miss by 50-80 bps due to poor mix, opex [operating expenses] in-line and a little revenue upside netting out to an EPS [earnings per share] miss." Horvath further stated in the email: "Please keep to yourself as obviously not well known."

b. On or about August 26, 2008, at approximately 1:12 p.m., STEINBERG responded to Horvath's email, stating, in relevant part: "Yes normally we would never divulge data like this, so please be discreet."

c. On or about August 27, 2008, at approximately 1:11 p.m., STEINBERG sent an email to Horvath with the subject line "Dell action," stating, in relevant part: "Have u double checked [with] JT [Jesse Tortora] this week?" At approximately 1:15 p.m. the same day, Horvath responded: "Yes he [Tortora] checked in couple days ago, same read no change."

d. On or about August 28, 2008, at approximately 3:56 p.m., STEINBERG executed or caused to be executed an additional short sale of approximately 30,000 shares of Dell.

15. Between on or about August 19, 2008 and on or about August 28, 2008, MICHAEL STEINBERG, the defendant, also

executed or caused to be executed securities transactions in Dell option contracts based in whole or in part on the Dell Inside Information.

16. The August 28 Earnings Announcement included gross margin numbers for Dell that were materially below market expectations. As a result, at the close of the trading day following the August 28 Earnings Announcement, Dell's stock price dropped by more than 13%, from approximately \$25.21 at the close on August 28, 2008 to \$21.73 at the close on August 29, 2008.

17. Between on or about August 29, 2008 and September 2, 2008, MICHAEL STEINBERG, the defendant, covered or caused to be covered his portfolio's entire short position in Dell shares and closed out or caused to be closed out the portfolio's position in Dell option contracts, earning an illegal profit for Hedge Fund A of approximately \$1 million.

The NVIDIA Inside Information

18. In or about 2009, Kuo obtained Inside Information regarding NVIDIA's financial results (the "NVIDIA Inside Information") in advance of NVIDIA's quarterly earnings announcements. Kuo obtained the NVIDIA Inside Information from a friend, Hyung Lim ("Lim"), who, in turn, obtained the NVIDIA Inside Information from an employee at NVIDIA (the "NVIDIA Insider").

19. At certain times relevant to this Indictment, the NVIDIA Insider worked in NVIDIA's finance department, and had access to confidential financial information concerning NVIDIA's quarterly earnings announcements before the information was publicly announced. The disclosure by the NVIDIA Insider of the NVIDIA Inside Information in advance of NVIDIA's public earnings announcements violated NVIDIA's policies and the NVIDIA Insider's fiduciary and other duties of trust and confidence owed to NVIDIA.

20. Kuo passed the NVIDIA Inside Information to the portfolio manager at Investment Firm C for whom he worked, and to Tortora and Horvath, among others.

May 7, 2009 Earnings Announcement

21. NVIDIA announced its earnings for the quarter ended April 26, 2009 shortly after the close of the market on or about May 7, 2009 (the "May 7 Earnings Announcement"). In advance of the May 7 Earnings Announcement, the NVIDIA Insider provided to Lim, who, in turn, provided to Kuo, Inside Information concerning NVIDIA's financial results for the quarter ended April 26, 2009. That Inside Information reflected, among other things, that NVIDIA's gross margins would be lower than market expectations. As such, the Inside Information was negative news concerning the upcoming May 7 Earnings Announcement.

22. Kuo provided this NVIDIA Inside Information to Horvath, among others, who then provided it to MICHAEL STEINBERG, the defendant. STEINBERG executed or caused to be executed transactions in securities of NVIDIA in advance of the May 7 Earnings Announcement based in whole or in part on the NVIDIA Inside Information.

23. Specifically, on or about April 27, 2009 and May 4, 2009, Horvath received emails from Kuo that contained Inside Information concerning the May 7 Earnings Announcement. Horvath provided this Inside Information to MICHAEL STEINBERG, the defendant. Subsequently, on or about May 5, 2009 and May 7, 2009, STEINBERG executed or caused to be executed securities transactions that were the economic equivalent of a short sale of 160,000 shares and 100,000 shares, respectively, of NVIDIA stock, based in whole or in part on the NVIDIA Inside Information.

24. The May 7 Earnings Announcement included gross margin numbers for NVIDIA that were materially below market expectations. As a result, at the close of the trading day following the May 7 Earnings Announcement, NVIDIA's stock price dropped by more than 13%, from approximately \$10.73 at the close on May 7, 2009 to \$9.25 at the close on May 8, 2009.

25. Shortly after the May 7 Earnings Announcement, MICHAEL STEINBERG, the defendant, liquidated or caused to be

liquidated his portfolio's entire position in NVIDIA securities, earning an illegal profit for Hedge Fund A of over \$400,000.

The Conspiracy

26. From in or about late 2007 through in or about 2009, in the Southern District of New York and elsewhere, MICHAEL STEINBERG, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

Securities Fraud

27. It was a part and an object of the conspiracy that MICHAEL STEINBERG, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in

order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

28. Among the means and methods by which MICHAEL STEINBERG, the defendant, and others known and unknown, would and did carry out the conspiracy were the following:

a. STEINBERG received Inside Information from Horvath which Horvath obtained directly and indirectly from employees of public companies who disclosed such information in violation of fiduciary and other duties of trust and confidence that they owed to their employers.

b. Horvath obtained the Inside Information either from his own sources at the Technology Companies or indirectly through one or more of the Analyst Coconspirators.

c. STEINBERG executed and caused others to execute securities transactions for the benefit of Hedge Fund A in various Technology Companies based in whole or in part on the Inside Information provided by Horvath, knowing that the Inside Information had been disclosed by public company employees in

violation of duties of trust and confidence owed to their employers.

Overt Acts

29. In furtherance of the conspiracy, and to effect the illegal object thereof, MICHAEL STEINBERG, the defendant, and his coconspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about August 5, 2008, Tortora sent an email to Horvath that contained certain of the Dell Inside Information.

b. On or about August 18, 2008, Tortora had a telephone conversation with Horvath.

c. On or about August 18, 2008, Horvath had a telephone conversation with STEINBERG, who was in New York, New York at the time.

d. On or about August 26, 2008, Horvath sent an email to STEINBERG and another portfolio manager at Hedge Fund A that contained certain of the Dell Inside Information.

e. On or about May 4, 2009, Kuo sent an email to Horvath and others that contained certain of the NVIDIA Inside Information.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH FIVE

(Securities Fraud)

The Grand Jury further charges:

30. The allegations contained in paragraphs 1 through 25 and 28 through 29 are repeated and realleged as though fully set forth herein.

31. On or about the dates set forth below, in the Southern District of New York and elsewhere, MICHAEL STEINBERG, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, STEINBERG executed or caused others to execute the securities transactions listed below based in whole or in part on Inside Information provided to him by Horvath:

COUNT	DATE	SECURITY	TRANSACTION
TWO	August 18, 2008	Dell, Inc.	short sale of at least 167,368 shares of common stock
THREE	August 28, 2008	Dell, Inc.	short sale of 30,000 shares of common stock
FOUR	May 5, 2009	NVIDIA Corporation	a swap transaction equivalent to a short sale of 160,000 shares of common stock
FIVE	May 7, 2009	NVIDIA Corporation	a swap transaction equivalent to a short sale of 100,000 shares of common stock

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Sections 240.10b-5
and 240.10b5-2; and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

32. As a result of committing one or more of the foregoing conspiracy and securities fraud offenses alleged in Counts One through Five of this Indictment, MICHAEL STEINBERG, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities fraud offenses.

Substitute Assets Provision

33. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;


c. has been placed beyond the jurisdiction of the court;



d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981; Title 28, United States Code, Section 2461; Title 18, United States Code, Sections 371 and 2; Title 15, United States Code, Sections 78j(b) and 78ff; and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.)


FOREPERSON


PREET BHARARA 
United States Attorney

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- v. -

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Defendant.

SUPERSEDING
INDICTMENT

S4 12 Cr. 121 (RJS)

(18 U.S.C. §§ 2, 371; Title 15, United
States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations,
Section 240.10b-5)

PREET BHARARA
United States Attorney.

A TRUE BILL



FOR PERSON.
